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IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 487

CANADA MALTING COMPANY, LTD.,
Petitioner-Libellant,

—against—

PATERSON STEAMSHIPS, LTD.,
Respondent.

No. 488

BRITISH EMPIRE GRAIN COMPANY, LTD.,
Petitioner-Libellant,

—against—

PATERSON STEAMSHIPS, LTD.,
Respondent.

No. 489

HENRY K. STARNES, doing business as H. K. Starnes & Company,
Petitioner-Libellant,

—against—

PATERSON STEAMSHIPS, LTD.,
Respondent.

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

BIGHAM, ENGLAR, JONES & HOUSTON,
Proctors for Petitioners, Canada Malting Co., Ltd., British Empire Grain Co., Ltd., Henry K. Starnes, doing business as H. K. Starnes & Company.

D. ROGER ENGLAR,
OSCAR R. HOUSTON,
LEONARD J. MATTESON,
Of Counsel.

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—against—

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Respondent.

HENRY K. STARNES, doing business as H. K. Starnes & Company,
Petitioner-Libellant,

—against—

PATERSON STEAMSHIPS, LTD.,
Respondent.

Petition.

Your petitioners, Canada Malting Company, Ltd., British Empire Grain Company, Ltd. and Henry K. Starnes, doing business as H. K. Starnes & Company, owners of cargo laden on the steamship "Yorkton" pray for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit to review its orders,

entered July 28, 1931 (R. 182-184), affirming the decrees of the United States District Court for the Western District of New York. The opinion of the Circuit Court of Appeals (R. 177) is not officially reported. The original opinion of the District Court (R. 132) is officially reported at 49 F. (2d) 802. The opinion of the District Court on application for rehearing (R. 141) is officially reported at 49 F. (2d) 804.

Nature of the Case.

These suits were instituted by the petitioners, as owners of cargo laden on the steamship "Yorkton" against Paterson Steamships, Ltd., as owner of the steamship "Mantadoc", to recover damages for total loss of cargo laden on the steamship "Yorkton", as a result of collision with the steamship "Mantadoc" in Lake Superior on the American side of the International boundary on July 9, 1930. The libels allege that the collision occurred by reason of faults on the part of the "Mantadoc" (R. 6, 63, 69). An investigation conducted by the Dominion Wreck Commissioner at Toronto resulted in a finding that the masters of both vessels were at fault (R. 51).

Upon the filing of the libels and the seizure under writ of foreign attachment of the respondent's vessel "Lachinedoc" at the port of Buffalo, the respondent appeared generally and filed stipulations for the release of its vessel. Before the return day it excepted to the libels and moved for a dismissal of the suits. After a hearing upon the libels, exceptions, and affidavits, the motion was granted. On a petition for a rehearing, a further opinion was filed by the District Court affirming its earlier decision. Decrees were entered in the respective suits sustaining the exceptions and dismissing the libels, remitting the libellants to their remedies in the courts of

the Dominion of Canada and directing that respondent appear and file security in any action instituted by the libellants in the admiralty courts of Canada. The libellants appealed and the Circuit Court of Appeals affirmed these decrees.

The grounds of the respondent's exceptions to the libel were in substance that, inasmuch as the libellants and the respondent are Canadian citizens and the damage involved cargo shipped on a Canadian vessel between Canadian ports damaged by reason of collision with a Canadian vessel, the Court should in its discretion decline to take jurisdiction of the case. Special grounds of alleged inconvenience and prejudice were asserted, all of which were disputed by the libellants.

The petitioners-libellants contended that, in view of the fact that the collision occurred within the territorial waters of the United States and the cause of action arose out of the law of this country, the District Court had no discretion to decline jurisdiction. The petitioners also contended that the circumstances of the case were not such as to justify an exercise of discretion on the part of the District Court to decline jurisdiction. Both the lower courts held that the exercise of jurisdiction under the circumstances of this case was discretionary and the Circuit Court of Appeals declined to interfere with the exercise of that discretion by the District Court in dismissing the libels.

The importance of this decision to the libellants is that under the law of the United States an innocent cargo owner can recover full damages from the non-carrying vessel if both the colliding vessels were at fault—

The New York, 175 U. S. 187, 209—

while under the Canadian law only half damages would be recoverable from the respondent (R. 97, 98). It appears from undisputed facts that the respondent, as owner of the "Mantadoc" will not suffer from the application of the law of the United States to this case, for the reason that the damages of the owner of the "Yorkton" greatly exceed the damages of the owners of the "Mantadoc" and of these libellants combined, giving the respondent perfect protection in the way of a set-off against the claim of the owners of the "Yorkton" of half the damages they must pay to the libellants—

The Chatahoochee, 173 U. S. 540.

Consequently the only beneficiary of the decision of the lower courts is the owner of the "Yorkton", jointly at fault for the collision and not a party to these proceedings.

The Questions Presented.

I. *In cases of collision* OCCURRING WITHIN THE TERRITORIAL LIMITS OF THE UNITED STATES, *has the District Court discretion to decline to exercise the admiralty jurisdiction conferred by the Constitution and acts of Congress in a case where the parties are not citizens of the United States?*

II. *Does the treaty between Great Britain and the United States guaranteeing free navigation of the waters of the Great Lakes to the citizens of each country, subject however to the laws and regulations of either country within its territory, abrogate, with respect to collisions between foreign vessels navigating on the Great Lakes*

within the territorial waters of the United States, the rule repeatedly laid down by this Court that in tort cases the rights and liabilities of the parties arise out of and depend upon the laws of the place of the act, and justify the holding of the Circuit Court of Appeals that the rights and obligations of the parties should be determined as though the collision had occurred on the high seas, that is, by the law of their common flag?

The petitioner contends that in cases of collision occurring within the territorial limits of the United States, the admiralty jurisdiction conferred on the District Courts is positive and mandatory, and there is no discretion to decline jurisdiction in such a case even though the parties are not citizens of the United States.

Since the collision occurred within the territorial waters of the United States, the rights of the parties arise out of and depend upon the law of this country—

Smith v. *Condry*, 1 How. 28, 32;
New York Central v. *Chisholm*, 268 U. S. 29, 32;
Western Union Telegraph Co. v. *Brown*, 234 U. S. 542, 547;
Slater v. *Mexican National Railroad Co.*, 194 U. S. 120, 126.

Although a cause of collision is a transitory action and jurisdiction thereof may be entertained wherever jurisdiction of the parties can be obtained (15 C. J. 739, sec. 41), jurisdiction in another state than that where the act complained of occurs rests merely upon comity and may be declined under proper circumstances (15 C. J. 741). *But the one court having positive undeniable*

jurisdiction of the cause is that of the state where the cause of action arose, whose laws have been violated and whose duty it is to afford redress.

Where the state has conferred jurisdiction on its courts to hear and determine a cause arising out of violation of its own laws, such jurisdiction is positive and mandatory—

Second Employers Liability Cases, 223 U. S. 1, 58-9;
Chicot County v. *Sherwood*, 148 U. S. 529, 534;
McClellan v. *Carland*, 217 U. S. 268, 282;
Kline v. *Burke Construction Co.*, 260 U. S. 226, 234;
Hyde et al. v. *Stone*, 20 How. 170, 175;
Raich v. *Truax et al.*, 219 F. 273;
Woren v. *Witherbee*, 240 F. 1013, 1017;
Defiance Water Company v. *City of Defiance*, 100 F. 178.

The decision of the Circuit Court of Appeals is based on the erroneous proposition that, although the collision admittedly occurred in Lake Superior on the American side of the International boundary, "the rights and obligations of the litigants" do not arise out of the law of this country but "should be determined as though the collision had occurred on the high seas, that is, by the law of their common flag" (R. 182). Pursuant to this erroneous view, the Circuit Court of Appeals justified its decision under *The Belgenland*, 114 U. S. 355, where this Court, dealing with a cause of collision arising *on the high seas* between foreigners, said that jurisdiction is discretionary with respect to a "controversy between foreigners *in cases not arising in the country of the forum*" (p. 363) and that the courts will use discretion as to assuming jurisdiction "of controversies between foreigners

in cases arising beyond the territorial jurisdiction of the country to which the courts belong" (p. 365, italics ours).

The Circuit Court of Appeals said:

> "Under the terms of the treaty between Great Britain and the United States (36 Stat. 2448) the waters of the Great Lakes are equally free to citizens of either Canada or the United States, and we think collisions in those waters are to be dealt with as though on the high seas" (R. 181).

The court ignored the essential difference between the situation on the high seas and that existing with respect to the waters of the Great Lakes, jurisdiction over which is divided between the United States and Canada by an agreed boundary, and overlooked completely the fact that while the Treaty grants the right of free navigation to vessels of either nation across the boundary, this right is granted *"subject, however, to any laws and regulations of either country* within its own territory * * *" (36 Stat. 2448).

Upon consideration of the provisions of the Treaty, it is clear that although the Canadian steamers here involved had been given the privilege of navigating within the territorial waters of the United States they were nevertheless subject to the rules of navigation and the laws of the United States while navigating on the American side of the boundary line. The goods of these libellants were injured within our territorial boundaries by acts of the respondent constituting negligence under our laws. These libellants have appealed to our courts for redress. The respondent is before the court by general appearance as well as by attachment of its goods. The court has jurisdiction of the parties and the subject-matter. We submit that it was the duty of the

District Court to retain jurisdiction, proceed with the case, and afford the libellants (foreigners though they be) the measure of redress granted to all by our laws and not to abdicate its jurisdiction in favor of a foreign court.

REASONS FOR ALLOWANCE OF WRIT.

I. The question presented is one of considerable public interest, involving the question as to what law is applicable with respect to collisions occurring on the waters of the Great Lakes and the interpretation of the treaties between the United States and Great Britain with respect to jurisdiction over those waters.

II. The decision of the Circuit Court of Appeals is based on a misapplication of the decisions of this Court in

The Belgenland, 114 U. S. 355;
The Maggie Hammond, 76 U. S. 435;
Charter Shipping Co. v. *Bowring,* 281 U. S. 515; and
Langnes v. *Green,* 282 U. S. 531.

III. The decision of the lower courts denies the protection of our laws to a foreigner whose goods have been injured while within our territorial boundaries by acts of the respondent which constitute negligence under our laws, and is a violation of the duty of our sovereignty under International Law to afford the protection of our laws and the redress afforded by our courts to citizens of other states or their property while within our borders.

IV. The action of the lower courts in this case is the only instance reported in which a court of the United States has declined to entertain jurisdiction and afford redress with respect to a cause of collision occur-

ring either within our territorial limits, or upon the high seas, or elsewhere.

We submit that the decision of the Circuit Court of Appeals is wrong and should be reviewed by this Court.

WHEREFORE, your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Second Circuit, commanding that Court to certify and to send to this Court for its review and determination on a day certain to be therein named, a full and complete transcript of the record of all proceedings in the cases numbered on its docket #433, #434, and #435, October Term, 1930, and entitled: "Canada Malting Company, Ltd., Libellant-Appellant, v. Paterson Steamships, Ltd., Respondent-Appellee; British Empire Grain Company, Ltd., Libellant-Appellant, v. Paterson Steamships, Ltd., Respondent-Appellee; and Henry K. Starnes, doing business as H. K. Starnes & Company, Libellant-Appellant, v. Paterson Steamships, Ltd., Respondent-Appellee"; and that said decrees of the United States Circuit Court of Appeals for the Second Circuit may be reversed by this Honorable Court as herein pray[illegible] for; and that your petitioners may have such ot[illegible] and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioners will ever pray.

CANADA MALTING COMPANY, LTD.,
BRITISH EMPIRE GRAIN COMPANY, LTD.,
HENRY K. STARNES, doing business as H. K. Starnes & Company.

By D. ROGER ENGLAR,
Counsel for Petitioners.

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Petitioner-Libellant,

—against—

PATERSON STEAMSHIPS, LTD.,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

The facts are fully stated in the petition. These suits are within the admiralty and maritime jurisdiction of the United States and of this Honorable Court. Jurisdiction of this Court is invoked under Title 28, Chapter 9, Section 347 of the Judicial Code, as amended

by Act of February 13, 1925, 43 Statutes 938, and under Article 3, Section 2 of the Constitution of the United States.

Specifications of Error.

The Circuit Court of Appeals erred in the following respects:

1. In affirming the decision of the District Court sustaining the exceptions to the libels and entering a decree dismissing the libels in the exercise of assumed discretion, although the cause is one of collision occurring within the territorial waters and under the laws of the United States, and although there has been a clear, definite and positive delegation by Congress to the United States District Courts of jurisdiction in such cases.

2. In holding that under the terms of the treaty between Great Britain and the United States collisions occurring in the waters of the Great Lakes are to be dealt with as though on the high seas.

3. In holding that there was discretion in the District Court to decline jurisdiction under the circumstances of this case.

POINT I.

The Circuit Court of Appeals erred in holding that the rights and obligations of litigants with respect to collisions occurring on the waters of the Great Lakes should, under the terms of the treaty between Great Britain and the United States, be determined as though the collision had occurred on the high seas, that is, by the law of their common flag.

In the case of *Slater* v. *Mexican National Railroad Company,* 194 U. S. 120, this Court, speaking of a tort liability, said:

> "But as the only source of this obligation is the law of the place of the act, it follows that that law determines not merely the existence of the obligation, *Smith* v. *Condry,* 1 How. 28, but equally determines its extent" (p. 126).

This is the universal rule.

> *Smith* v. *Condry,* 1 How. 28, 32;
> *New York Central* v. *Chisholm,* 268 U. S. 29, 32;
> *Western Union Telegraph Company* v. *Brown,* 234 U. S. 542;
> *American Banana Company* v. *United Fruit Company,* 213 U. S. 347.

It is true, as pointed out by the Circuit Court of Appeals, that in *The Scotland,* 105 U. S. 24, 29, this Court held that when two vessels of the same nationality collide upon the high seas, the law enforced by our

courts will be the law of their common flag. In that case this Court said:

> "In administering justice between parties it is essential to know by what law, or code, or system of laws, their mutual rights are to be determined. When they arise in a particular country or State, they are generally to be determined by the laws of that State. Those laws pervade all transactions which take place where they prevail, and give them their color and legal effect" (p. 29).

The basis of the different rule with respect to collisions on the high seas was clearly set forth, as follows:

> "But, if a collision occurs on the high seas, *where the law of no particular State has exclusive force,* but all are equal, any forum called upon to settle the rights of the parties would *prima facie* determine them by its own law as presumptively expressing the rules of justice; but if the contesting vessels belonged to the same foreign nation, the court would assume that they were subject to the law of their nation carried under their common flag, and would determine the controversy accordingly." (Italics ours, pp. 29, 30.)

The collision in this case does not fall within the rule of *The Scotland* because it did not occur "on the high seas, where the law of no particular State has exclusive force". Territorial jurisdiction over the waters of the Great Lakes has been fixed and divided between Canada and the United States by a certain boundary line through the Lakes established by the Treaty of Peace of 1783. By the Treaty of 1794 the right of common navigation of the boundary waters was reciprocally stipulated in favor of the citizens and subjects of the

two countries and these rights were extended by the Treaty of 1871. The latest treaty on the subject, setting forth the situation existing at the time of this collision, is the Root-Bryce Treaty of 1909, 36 Stat. 2448, Art. 1, of which provides as follows:

> "Art. 1. The High Contracting Parties agree that the navigation of all navigable boundary waters shall forever continue free and open for the purpose of commerce to the inhabitants, and to the ships, vessels and boats of both countries equally, *subject, however, to any laws and regulations of either country within its own territory, not inconsistent with such privilege of free navigation and applying equally and without discrimination to the inhabitants, ships, vessels and boats of both countries.*" (Italics ours.)

Substantially the same right of common navigation of the boundary waters was reciprocally stipulated in favor of the citizens and subjects of the two countries by the treaties of 1794 and 1871.

It is clear from language quoted that while the right of free navigation on either side of the boundary line is granted to vessels of both countries, it is distinctly stipulated, that they shall be subject to all laws and regulations of either country within its own territory applying equally and without discrimination to the vessels of both countries.

The fact that the treaties have merely afforded reciprocal rights of freedom of transit and navigation to the respective nationals on either side of the international boundary on the waters of the Great Lakes and that this did not affect the territorial character of those waters has been uniformly recognized. In an opinion

rendered with respect to fishing rights by Acting Secretary of State Uhl, May 23, 1894, 194 MS. Dom. Let. 118, Moore's Digest of International Law, Vol. I, 672, it was said:

> "The conclusion is reached that the Great Lakes, whose waters separate the United States from the British Dominion of Canada are wholly territorial, and that the territorial jurisdiction of the respective sovereignties extends and is exercisable to the boundary which, by treaty, has been established between them as running through the middle of said lakes. This Government can neither claim nor admit that in the center of these lakes, on either side of the treaty boundary and up to a distance of one marine league from shore, there can be an area of 'high seas' in the determination of such a question as is presented."

The learned Acting Secretary referred to the decision of this Court in *U. S.* v. *Rodgers*, 150 U. S. 249, holding that the Great Lakes are "high seas" within the meaning of the Federal Crimes Act and that our Courts have jurisdiction to punish an offense under that act committed on an American vessel though in Canadian waters and pointed out that "it by no means follows that those waters are 'high seas' as regards territorial rights of the sovereignties which own their shores." The conclusion was reached that each country had full power to legislate with respect to fishing rights in waters on its side of the international boundary. The same situation has been recognized with respect to the right of each country to legislate concerning wrecking privileges. Moore's Digest Int. Law, Vol. I, §142, pp. 684-691.

With respect to the control of the manner, as opposed to the freedom, of navigation, the complete right of

each country to legislate and provide Rules of Navigation controlling the conduct of all vessels while within its territorial waters, irrespective of the treaty provisions hereinbefore referred to, has always been recognized. For this reason in order to avoid confusion with respect to the rules of navigation in cases where it was necessary for vessels to cross and recross the International Boundary, it was finally arranged by diplomatic negotiations between the two countries that each should adopt similar rules of navigation. Moore's Digest Int. Law, Vol. I, §141, pp. 683, 4.

It is clear, therefore, that the navigation of the vessels here involved, though Canadian, was controlled by the provisions of the statutes of the United States prescribing Rules of Navigation, at the time of the collision in American waters. It is equally clear that the nature and extent of the rights arising out of the collision is governed by the Law of the United States.

The Circuit Court of Appeals was, therefore, quite unjustified in applying the rule of *The Scotland,* which is based on the assumption that the collision has occurred "where the law of no particular State has exclusive force". The case falls squarely within the general principle first cited, that "the only source of this obligation is the law of the place of the act" which "determines not merely the existence of the obligation * * * but equally determines its extent." (*Slater* v. *Mexican National Railroad Company, supra.*)

The Circuit Court of Appeals cited the case of *The Eagle,* 75 U. S. 15, as authority for the proposition that collisions occurring on the waters of the Great Lakes are to be dealt with as though on the high seas. That

was an action by the owner of a brig *in rem* against a towing vessel to recover damages for negligent stranding and incidental collision with another vessel in tow, which occurred on the Canadian side of the Detroit River. It was urged that the Canadian law, which gave no lien, should apply. But the court held that the suit should be tried according to the practice and principles of admiralty in this country irrespective of Canadian law. The case is one involving a question of practice and procedure. There is nothing in the reasoning of the court in that case which would justify a variance as to the substantive law applicable with respect to a collision occurring in the territorial waters of one sovereignty or the other from the general rule which has been repeatedly laid down by this Court, that the substantive law applicable to the rights of the parties is "the law of the place of the act" (Cases, *supra*, p. 13). If the decision in *The Eagle* is inconsistent with the decision of this Court in the *Slater* and later cases, it must, of course, be regarded as overruled. The case of the *Avon*, Fed. Cas. 680 (N. D. Ohio), cited by the Circuit Court of Appeals, follows the decision in *The Eagle*. The case of *Thompson Towing & Wrecking Ass'n* v. *McGregor*, 207 Fed. 209, 217 (6 CCA), deals with the doctrine that a vessel abroad is considered constructively part of her home territory "so far as her 'internal management and discipline' are concerned." *The Kaiser Wilhelm der Grosse*, 175 Fed. 215 (S. D. N. Y.) and the *West Cherow*, 276 Fed. 585 (E. D. Va.), deal with collisions occurring on the high seas within a marine league of a foreign coast or in an open roadstead. All of these decisions deal with the remedy to be afforded by our courts in cases where they have taken jurisdiction of a cause of action arising outside our territorial limits. These decisions

do not affect the general principle that in a case pending in our courts the rights and liabilities of the parties with respect to a collision occurring within our territorial waters arise out of our law which determines both their nature and extent.

POINT II.

In cases of collision occurring within the territorial limits of the United States, the admiralty jurisdiction conferred upon the District Courts is positive and mandatory, and there is no discretion to decline jurisdiction in such a case even though the parties are not citizens of the United States.

The jurisdiction of the United States District Court is conferred and defined by Act of Congress. Section 41 of the United States Code provides as follows:

> "Section 41 (Judicial Code, section 24, amended.) *Original Jurisdiction.* The district courts shall have original jurisdiction as follows:
> * * * * * * * *
>
> Third. Of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common-law remedy where the common-law is competent to give it * * *."

This is a clear and definite and positive delegation by Congress to the United States District Courts of jurisdiction in all admiralty cases to which the jurisdiction of the United States rightly extends. By its terms no discretion is vested in the District Court to decline jurisdiction in such a case regardless of who the parties may be.

As to causes arising under the laws of the United

States the delegation of jurisdiction is of course full and complete. The fact that as to transitory causes arising outside our territorial limits, jurisdiction is exercised as a matter of comity only and within the Court's sound discretion, in no way affects the positive delegation of jurisdiction with respect to causes of admiralty arising within our territorial limits and under our laws.

It is the universal rule that the vesting of jurisdiction in a court by the Legislature creates a duty on the part of the Court to take and exercise the jurisdiction which is granted.

In the Second Employers' Liability cases, this Court said:

> "*The existence of the jurisdiction creates an implication of duty to exercise it,* and that its exercise may be onerous does not militate against that implication * * *.
>
> "We conclude that rights arising under the act in question may be enforced, *as of right,* in the courts of the States when their jurisdiction, as prescribed by local laws, is adequate to the occasion." *Second Employers' Liability Cases,* 223 U. S. 1, 58-9. (Italics ours.)

In the case of *Cohens* v. *Virginia,* 19 U. S. (6 Wheat.) 264, 403, this Court said:

> "It is most true that this court will not take jurisdiction, if it should not; but *it is equally true that it must take jurisdiction, if it should.* The judiciary cannot, as the Legislature may, avoid a measure, because it approaches the confines of the Constitution. We cannot pass it by, because

it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. *We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given.* The one or the other would be treason to the Constitution. Questions may occur, which we would gladly avoid; but we cannot avoid them. All we can do is to exercise our best judgment, and conscientiously to perform our duty."

"In doing this, on the present occasion, we find this tribunal invested with appellate jurisdiction in all cases arising under the Constitution and laws of the United States. We find no exception to this grant and we cannot insert one." (Italics ours.)

See also:

Raich v. *Truax et al.*, 219 Fed. 273, 285;
Murman v. *Wabash Railway Co.*, 220 App. Div. N. Y. 218;
Gregonis v. *P. R. Coal & Iron Co.*, 235 N. Y. 152.

This Court has dealt with the identical question in another line of cases involving the conflict of jurisdiction with, or the concurrent jurisdiction of, the State Courts. In the case of *Chicot County* v. *Sherwood*, 148 U. S. 529, 534, this Court said:

"But the Courts of the United States are bound to proceed to judgment and afford redress to suitors before them in every case to which their jurisdiction extends. They cannot abdicate their authority or duty in any case in favor of another jurisdiction. *Suydam* v. *Broadnox*, 14 Peters 67;

Union Bank v. *Jollys Administrators*, 18 How. 503."

Similar decisions are:

McClellan v. *Carland*, 217 U. S. 268, 282;
Kline v. *Burke Construction Co.*, 260 U. S. 226, 234;
Hyde et al. v. *Stone*, 20 How. 170, 175.

See also:

Woren v. *Witherbee*, 240 Fed. 1013, 1017;
Defiant Water Co. v. *City of Defiance*, 100 Fed. 178.

In conferring on the District Courts jurisdiction of causes in admiralty, Congress placed no limiting provision. Even citizens of the same State in causes involving small amounts may sue each other in the District Court if the cause is one of admiralty. Similarly, Congress forebore to place any restriction on suits by, against or between foreigners and gave to the District Courts full and complete jurisdiction of causes in admiralty, regardless of parties.

Since Congress conferred this broad power, it is the duty of the District Courts to exercise the power granted and afford redress to suitors before them in every case to which their jurisdiction extends. They cannot abdicate their authority or duty in any case in favor of another jurisdiction. These libellants had the right to select this forum in which to have their rights adjudicated, and it was the duty of the District Court to hear their applications and determine the issues involved.

The District Judge in his opinion (R. 133-6, 142)

placed emphasis on the language used by this Court in its recent opinion in the cases of *Charter Shipping Co., Ltd.* v. *Bowring, Jones & Tidy, Ltd.*, 281 U. S. 515, 517, as follows:

> "The retention of jurisdiction of a suit in admiralty between foreigners is within the discretion of the District Court. The exercise of its discretion may not be disturbed unless abused. *The Belgenland*, 114 U. S. 355, 368; *The Maggie Hammond*, 9 Wall. 435, 457."

A similar statement is found in the opinion in *Lagnes* v. *Green*, 282 U. S. 531, 544. The citations appended to the Court's statement, however, show clearly that the Court was merely restating the rule laid down in the case of *The Belgenland*, 114 U. S. 355, which is expressly limited to "controversies between foreigners *in cases not arising in the country of the forum*" (p. 363) or, as stated at another point in the opinion "cases arising *beyond the territorial jurisdiction* of the country to which the Courts belong" (p. 365). *The Belgenland* was a cause of collision occurring on the high seas. *The Maggie Hammond*, 9 Wall. 435, 457, was a similar decision with respect to a cause of action for breach of contract for a shipment of goods between foreign ports, the contract being made in Scotland and breached abroad. *The Charter Shipping Company* case was a suit for the recovery of general average deposits asserted to have been illegally exacted from the libellant in London. Although the voyage originated in the United States, there was no question but that British law was applicable and this Court pointed out that the suit involved "the application of English law to the fund located there" holding that in such a cause retention of jurisdiction in a suit in admiralty between foreigners was within the discretion of

the Court. Obviously, the case called for no extension of the principles enunciated in *The Belgenland,* and we do not believe that any was intended. In the case of *Lagnes* v. *Green,* the Court was merely citing an analogous principle and the point was not involved. It is even more clear in that case that no extension of the principle of *The Belgenland* was intended. The Circuit Court of Appeals was clearly influenced by this, we believe erroneous, view of the effect of the passages referred to in this Court's opinions in the *Charter Shipping* and *Lagnes* cases (R. 179, 180) but forbore to rest its decision on this ground.

There is in fact no basis for suggesting that jurisdiction should be discretionary with respect to a collision occurring within the territorial limits of this country. The act is wrongful and gives rise to a cause of action only because of the laws of this country. The cause of action arises out of the law of this country and as a result of a breach of its laws. Our courts have criminal as well as civil jurisdiction of offenses at the point at which the collision occurred. The violations of law which contributed to this collision are a breach of our peace and of the security which our laws guarantee to the strangers within our gates, as well as to our own citizens. In Brown on Jurisdiction, Second Edition, page 22, the author says:

> "All judicial power flows from the state, and the grant of legislative power ceases at the line of the state. Judicial power must cease also at that point; *but within the state the power is complete, not only over its citizens, but over the citizens of other states, or of foreigners within its borders, even when passing through the state, the*

laws necessarily protecting its own citizens against the stranger's wrongful acts, and him also while within its borders. It will also give redress for any grievance he has received while passing through, either from citizens or aliens, and enforce any other right he may have, giving him the same relief he would be entitled to were he a citizen. While, therefore, the laws of the state act with equality toward all, throwing open the doors of the courts for the protection of the stranger and citizen alike, it justly requires that the protected party should respect the laws of the country that he or they have chosen to pass through or sojourn in. (Story on Conflict of Laws, sec. 541.) *The general rule of law is, both in England and the United States, that all aliens can bring suits against citizens, or even against other aliens, in all cases where the cause of action arises in the United States;* or, if it be a transitory action, arising anywhere. *Peabody* v. *Hamilton,* 106 Mass. 220.) The laws of the state even concede to the stranger the rights of citizens. One non-resident may sue another non-resident of the state, even upon a cause of action transient in its nature" (pp. 22-23, italics ours).

In Story on Conflict of Laws, 8th Ed., page 754, the following statement appears:

"Vattel lays down the true doctrine in clear terms. 'The sovereignty,' says he, 'united to domain, establishes the jurisdiction of the nation in its territories, or the country which belongs to it. It is its province or that of its sovereign, to exercise justice in all places under its jurisdiction, to take cognizance of errors committed, and the differences that may arise in the country.'"

As this collision occurred within the territorial waters of the United States and liability if any for collision must arise out of the law of the United States, these cases fall clearly within the class of cases of admiralty and maritime jurisdiction, as to which it is the duty of our sovereignty to take cognizance and afford redress. Jurisdiction of cases of this class has been committed by Congress to the District Courts of the United States. It was, therefore, the duty of the District Court to exercise its jurisdiction and afford these libellants the redress to which they are entitled under our laws. Any other conclusion would deny to the stranger within our gates the protection of our laws.

Conclusion.

The Circuit Court of Appeals has erroneously decided that our Courts must regard a cause of collision between Canadian vessels occurring on the Great Lakes within our territorial waters as a cause not arising under our laws, and that the Canadian owner of cargo thereby damaged has no right to appeal to our Courts for redress, although the owner of the offending vessel is present both by attachment of his property and by general appearance. The District Court has declined to exercise jurisdiction with respect to a cause of admiralty arising within the territorial waters of the United States and under its laws, and has abdicated its jurisdiction in favor of a foreign tribunal in spite of the positive delegation of jurisdiction in such cases by the Act of Congress. We submit that both decisions are contrary to the principles repeatedly enunciated by the decisions of this Court, that these principles are of great importance and that the

decisions of the lower courts should be reviewed and reversed.

Respectfully submitted,

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